

February 5, 1997

NOTICE OF AMENDMENT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**Mr. Dennis E. Stinson
Vice President of Operations
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122**

CPF No. 17002M

Dear Mr. Stinson:

On July 15 & 23, 1996, a representative of the Eastern Region, Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code, conducted an on-site inspection of Philadelphia Gas Work's (PGW) Anti-Drug Program and Alcohol Misuse Prevention Program in Philadelphia, Pennsylvania.

As a result of the inspection, it appears that PGW has committed probable violation of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations, Part 199 and Part 40. The items inspected and probable violations are:

1. Section 199.7 - Anti-Drug Plan

Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of Part 199, Subpart A and the DOT Procedures.

PGW did not maintain and follow a written anti-drug plan that conforms to Subpart A and DOT Procedures.

2. Section 199.17(b),(c)- Retention of Sample and Retesting

This section outlines the requirements for sample retention and retesting.

PGW's Drug Plan was inadequate in that it did not state that if an employee requests a retest, in writing within 60 days, the operator may require the employee to pay in advance the cost of shipment and reanalysis of the sample, but the employee must be reimbursed for such expense if the retest is negative (199.17(b)). Also, if the employee specifies retesting by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.

3. Section 199.23 - Record Keeping

Section 199.23 outlines the requirements pertaining to record keeping.

PGW's Drug Plan did not address these requirements for record keeping.

A previous DOT inspection of your Drug Plan was conducted on April 21-22, 1992. PGW was required to amend the Drug Plan according to a Notice of Amendment issued to PGW dated June 14, 1993. We have reviewed PGW's amended procedures, dated January 1, 1995, and found all items specified in the Notice of Amendment to be acceptable except Item No.2(e) which pertained to § 199.23, record keeping. Based upon this review, we have decided to close the Notice of Amendment, dated June 14, 1993, and incorporate the record keeping deficiency in this Notice.

4. Section 40.23 - Preparation for Testing

Section 40.23 outlines the requirements for the collection, shipment, and accessioning of urine specimens.

PGW's Drug Plan was inadequate in that it did not address the requirements in §§ 40.23(a), (b)(1), (b)(2), (c), and (d).

5. Section 40.25 - Specimen Collection Procedures

Section 40.25 outlines the requirements for specimen collection procedures which include requirements for the following: Designation of Collection Site, Security, Chain of Custody, Collection Site Access for Authorized Personnel, Privacy During Collection, Integrity and Identity of Specimen, Collection Control, Transportation of Specimen to Lab, Failure to Cooperate, Employee Requiring Medical Attention, and Use of Chain of Custody Forms.

PGW's Drug Plan was inadequate in that it only made references to the regulations, no written procedures were established.

6. Section 40.31 - Quality Assurance and Quality Control

Section 40.31 outlines the procedure requirements for blind performance testing. This section requires that each employer covered by DOT agency drug testing regulations shall use blind testing quality control procedures.

PGW's Drug Plan did not include quality control procedures for blind testing.

7. Section 40.33 - Reporting and Review of Results

Section 40.33 outlines the requirements for reporting and reviewing the test results by the MRO.

PGW's Drug Plan was inadequate in that it did not address the reporting and reviewing of test results by the MRO.

8. Section 199.202 - Alcohol Misuse Plan

Each operator shall maintain and follow a written alcohol misuse prevention plan that conforms to the requirements of Subpart B and the DOT procedures in Part 40.

PGW did not maintain and follow a written alcohol misuse prevention plan according to Subpart B and DOT Procedures.

9. Section 199.205 - Definitions

PGW's Alcohol Misuse Prevention Plan did not contain the following definitions as required under § 199.205: Administrator, alcohol concentration, alcohol use, confirmation test, consortium, covered function, DOT agency, employer or operator, performing (a covered function), refuse to submit (to an alcohol test), screening test, state agency, and substance abuse professional.

10. Section 199.207 - Preemption of State and Local Laws

Preemption Provisions were not addressed in PGW's Alcohol Misuse Prevention Plan.

11. Section 199.211 - Requirement for Notice

This section requires that each operator, prior to performing an alcohol test, shall notify covered employees that the alcohol test is required by Section 199, Subpart B.

PGW's Alcohol Misuse Prevention Plan did not address these requirements.

12. Section 199.219 - Pre-Duty Use

This section requires that each operator prohibit a covered employee from using alcohol within 4 hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report to duty.

PGW's Alcohol Misuse Prevention Plan did not address the pre-duty use.

13. Section 199.223 - Refusal to Submit to a Required Alcohol Test

Operator shall not permit employees to perform covered function if they refuse to submit to testing (post accident, reasonable suspicion, follow-up).

PGW's Alcohol Misuse Prevention Plan did not address these requirements.

14. Section 199.225(b)(3) - Reasonable Suspicion Testing

This section requires that a covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.

PGW's Alcohol Misuse Prevention Plan did not address these requirements.

15. Section 199.225(b)(4)(I),(ii),(iii) - Reasonable Suspicion Testing

This section outlines the steps an operator must follow if a required test is not administered to a covered employee within a specific amount of time.

PGW's Alcohol Misuse Prevention Plan did not address these requirements.

16. Section 199.225(c) - Return to Duty Testing

This section requires that, a covered employee who has engaged in prohibited conduct, shall undergo a return to duty alcohol test with a result indicating an alcohol concentration less than .02.

PGW's Alcohol Misuse Prevention Plan did not address this requirement.

17. Section 199.225(d) - Follow-up Testing

This section requires that covered employees are subject to unannounced follow-up testing.

PGW's Alcohol Misuse Prevention Plan did not address this requirement.

18. Section 199.225(e) - Retesting

This section outlines the requirements for retesting of covered employees with an alcohol concentration of .02 or greater but less than .04.

Procedures for retesting of covered employees were not addressed in PGW's Alcohol Misuse Prevention Plan.

19. Section 199.227(a),(b),(c) - Retention of Records

This section outlines the requirements for record retention and the types of records that are to be maintained by the operator.

Procedures for the retention of records were not included in PGW's Alcohol Misuse Prevention Plan. The Plan only made references to the code.

20. Section 199.231(b) - Access to Facilities and Records

This section outlines the requirements for providing a covered employee copies of any records pertaining to the employee's use of alcohol, including test records, without payment restrictions.

PGW's Alcohol Misuse Prevention Plan did not address employee access to records without payment restrictions.

21. Section 199.239(b)(1),(3),(6) - Operator Obligation to Promulgate a Policy on the Misuse of Alcohol

This section outlines the required content of the educational materials that are to be made available to covered employees. Section 199.239(b)(1) requires that the material list the identity of the person designated by the operator to answer covered employee questions about the materials provided. Also, Section 199.239(b)(3) requires that the material provide sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with Part 199. In addition, Section 199.239(b)(6), requires that the material contain the procedures that will be used to test for the presence of alcohol.

PGW's Alcohol Misuse Prevention Plan did not address these requirements.

22. Section 199.243(a) - Referral, Evaluation, and Treatment

This section states that each covered employee shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol. This must include the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

Resource information was not included in PGW's Alcohol Misuse Prevention Plan.

23. Section 199.243(c)(2)(ii) - Referral, Evaluation, and Treatment

This section states that the substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the Substance Abuse Professional (SAP) determines that such testing is no longer necessary.

PGW's Alcohol Misuse Prevention Plan did not address this requirement.

24. Section 199.243(d) - Referral, Evaluation, and Treatment

This section states that evaluation and rehabilitation may be provided by the operator, SAP under contract, or SAP not affiliated with the operator.

PGW's Alcohol Misuse Plan did not specify that evaluation and rehabilitation may be provided by the operator, SAP under contract, or SAP not affiliated with the operator.

25. Section 40.51 - The Breath Alcohol Technician (BAT)

This section outlines the requirements for BAT training in the operation of the Evidential Breath Tester (EBT) he or she is using and also in the alcohol testing procedures of Part 40.

PGW's Alcohol Misuse Prevention Plan was inadequate in that it did not contain written procedures for BAT training in the alcohol testing procedures and the operation of the EBT. Referencing sections of the code is not a substitute for written procedures.

26. Section 40.55 - Quality Assurance Plans for EBT's

This section outlines the requirements for an EBT quality assurance plan.

PGW's Alcohol Misuse Prevention Plan did not address the quality assurance requirements for EBT.

27. Section 40.57(e) - Locations for Breath Alcohol Testing

This section requires that the BAT shall supervise only one employee' use of the EBT at a time and the BAT shall not leave the alcohol testing location while the testing procedure for a given employee is in progress.

PGW's Alcohol Misuse Prevention Plan did not address this requirement.

28. Section 40.59 - The Breath Alcohol Testing Form

This section outlines the requirements for the breath alcohol testing form.

PGW's Alcohol Misuse Prevention Plan did not address these requirements.

29. Section 40.61(a) - Preparation for Breath Alcohol Testing

This section requires when the employee enters the alcohol testing location, the BAT will require him or her to provide positive identification. On request by the employee the BAT shall provide positive identification to the employee.

PGW's Alcohol Misuse Prevention Plan did not address the preparation requirements for breath alcohol testing.

30. Section 40.63 - Procedures for Screening Tests

This section outlines the procedures for screening tests.

PGW's Alcohol Misuse Prevention Plan did not contain alcohol screening test procedures.

31. Section 40.65 - Procedures for Confirmation Tests

This section outlines the procedures required for performing confirmation tests.

PGW's Alcohol Misuse Prevention Plan did not provide procedures for confirmation testing.

32. Section 40.67 - Refusal to Test and Uncompleted Tests

This section outlines the regulatory requirements pertaining to a employees refusal to submit to an alcohol test and uncompleted tests.

PGW's Alcohol Misuse Prevention Plan did not include these requirements.

33. Section 40.69(b),(c),(d) - Inability to Provide an Adequate Amount of Breath

This section outlines the regulatory requirements pertaining to an employees inability to provide an adequate amount of breath.

PGW's Alcohol Misuse Prevention Plan was inadequate in that it did not address the requirements as outlined in §§ 40.69(b),(c) and (d).

34. Section 40.79 - Invalid Tests

Section 40.79 outlines the requirements for classifying alcohol tests invalid.

PGW's Alcohol Misuse Prevention Plan did not specify under what conditions that a breath alcohol test shall be considered invalid.

Under 49 United States Code 60122, you are subject to a civil penalty not to exceed \$25,000 for each violation for each day the violation persists up to a maximum of \$500,000 for any related series of violations.

When it is found that an operator's procedures are inadequate, 49 C.F.R. 190.237 provides that the operator, after notice and opportunity for hearing, may be required to amend its plans and procedures. This letter serves to provide you with the notice of the inadequate procedures and the response options as prescribed under 190.237. If you do not wish to contest this notice, please provide your revised procedures within 30 days of receipt of this notice.

Also attached to and made part of this Notice is a description of the available procedures for responding to this Notice. Please note that if you elect to make a response, you must do so within 30 days of your receipt of this Notice or waive your rights under 49 CFR 190.209. No response or a response which does not contest the allegations in the Notice authorizes the Associate Administrator, OPS to find the facts to be as alleged herein and to issue appropriate orders.

The 30 day response period may be extended for good cause shown and submitted within the original 90 days.

Please refer to CPF No 17002M in any correspondence/communication on this matter.

Sincerely,

William H. Gute
Eastern Regional Director
Office of Pipeline Safety

Enclosure

MYAZEMBOSKI/sj/DPS-24/366-4581/2/5/97
FILE: CPF No. 17002M/PGW
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